

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

JAN - 7 2010

Securities Investor Protection Corporation, Plaintiff, vs. Bernard L. Madoff Investment Securities LLC, Defendant.	<p>Bankruptcy Case No. 08-01789 (BRL)</p> <p>SIPA Liquidation</p> <p>OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM</p>
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Charles I Tannen ("Claimant") hereby objects to the denial of claim in the Trustee's Determination of Claim dated December 8, 2009, and states as follows:

1. On June 1st 2008 Claimant made an initial investment of \$250,000.00 into Rye Select Broad Market Prime Fund, L.P. (the "Rye Fund"). As of October 31st, 2008, the statement from the Rye Fund valued the investment at \$258,631.47.
2. All of the funds which Claimant invested in the Rye Fund were invested in Bernard L. Madoff Investment Securities LLC ("BLMIS").
3. On or about December 11, 2008, the above-captioned liquidation proceeding was commenced against BLMIS, pursuant to the Securities Investor Protection Act ("SIPA"), 15 U.S.C. § 78aaa *et seq.*
4. On or about December 15, 2008, jurisdiction of this matter was transferred to the United States Bankruptcy Court for the Southern District of New York, and Irving Picard was appointed as Trustee.
5. Pursuant to the SIPA, Trustee Picard was directed to oversee the liquidation of the assets of BLMIS and to process all claims against Defendant BLMIS, and the Debtor Bernard L. Madoff. *See* 15 U.S.C. § 78fff-1(a).
6. By order of this Court dated December 23, 2008, the Trustee was directed to disseminate notice and claim forms to all former BLMIS customers setting forth claim-filing deadlines. *See* Order entered at Dkt. No. 12. The Order directed the Trustee to "notify such claimant by mail of his determination that the claim is

disallowed, in whole or in part, and the reason therefore . . .”

7. In February 2009, prior to the claims filing deadline, Claimant duly filed a customer claim with the Trustee in the amount of \$250,000.00.
8. By Notice of Trustee’s Determination of Claim dated December 8, 2009, the Trustee notified Claimant that its claim had been denied on the following basis:

Based on a review of available books and records of BLMIS by the Trustee’s staff, you did not have an account with BLMIS. Because you did not have an account, you are not a customer of BLMIS under SIPA as that term is defined at 15 U.S.C. § 78lll(2). Accordingly, your Claim for securities and/or a credit balance is **DENIED**.
9. By this Notice of Objection, Claimant does hereby formally object to the determination by the Trustee.
10. First Objection: The Trustee’s determination fails to comply with the December 23, 2008 Order of the Court which directed the Trustee to satisfy customer’s claims in accordance with the Debtor’s books and records or which “are otherwise established to the satisfaction of the Trustee.” *See* Dkt. No. 12 at 5. The Claimant’s claim included proper documentation of the amount owed to Claimant. Accordingly, the claim should be allowed in full.
11. Second Objection: Contrary to the determination of the Trustee, Claimant is a “customer” as provided for by the Securities Investor Protection Act. As such, it is entitled to receive SIPC insurance. Section 78lll(2) of the SIPA defines “customer” as “any person who has deposited cash with the debtor for the purpose of purchasing securities.”¹ *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC*, 401 B.R. 629, 635 (Bankr. S.D.N.Y. 2009) (“the mere act of entrusting . . . cash to the debtor for the purpose of effecting securities transactions . . . triggers customer status . . .”) (alterations in original) (citations omitted). Apparently, the Trustee has taken the position that the fact that Claimant deposited funds with BLMIS indirectly is fatal to its claim as a “customer” under SIPA. This position is incorrect.
12. Under SIPA, the term “customer” is a term of art, and does not have its ordinary and customary meaning. *Arford v. Miller*, 239 B.R. 698, 701 (S.D.N.Y. 1999), *aff’d sub nom. In re Stratton Oakmont*, 210 F.3d 420 (2d Cir. 2000) (citations omitted). It is to be construed within the context of the definitional section of SIPA, and as interpreted by the courts.
13. The statute does not require that one have a direct relationship with the subject broker to be considered a “customer” under SIPA. All the plain language of the statute requires is that (a) the claim against the debtor arose out of sales or conversion of securities, and (b) that the customer made deposits with the fiduciary of cash or securities. *See* 15 U.S.C. § 78lll(2). The legislative history of SIPA supports this interpretation.

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